

Court No. 1 (E Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 104 of 2020**Monday, this the 19th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

JC-221664-L, Ex Nb Subedar, Shiv Shanker Chaubey, Son of late Kalapnath Chaubey, Resident of Village – Dudhaunda, Post- Patrahi, Tehsil- Kerakat, District- Jaunpur (U.P.)

.....Applicant

Ld. Counsel for Applicant: **Shri Sudhir Kumar Singh,**
Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi- 110011.
2. The Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), New Delhi-110011.
3. Senior Record Officer, The AOC Records, Army Ordinance Corps Record Office- Post Box No- 3, Trimulgherry Post – Secunderabad (A.P.) PIN- 500015.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) - 211014.

.....Respondents

Ld. Counsel for the : **Shri RC Shukla,**
Respondents **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(I). To pass an order or direction commanding the respondent to grant the disability pension to the applicant from the date of discharge i.e. 31.07.1996.

(II). To pass an order or direction commanding the respondent to grant the benefits disability pension to the applicant from the date of discharge i.e. 31.07.1996 along with interest @ 18% per annum till the actual realization of aforesaid amount.

(III). To pass an order or direction commanding the respondent to grant the benefits of rounding of the disability pension up to the tune of 50%, in terms of Govt. of India letter dated 31.01.2001 and various judgment of Apex Court as well as this Hon’ble Tribunal.

(IV). Pass any order which this Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.

(V). Allow the Original Application with costs.

(VI). To quash the impugned order dated 07.02.1997 and 14.03.1997 which is a annexed as annexure No 7 and 8 of counter affidavit.

2. Considering that in pensionary matters bar of limitation is not applicable, delay in filing Original Application is condoned.

3. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 10.07.1972 and

was discharged from service 31.07.1996 on completion of terms of engagement under Rule 13 (3) I (i) (a) of Army Rules, 1954 in Low Medical Category 'BEE (P) for the disease **"ESSENTIAL HYPERTENSION OLD 401, V-67"**. The Release Medical Board of the applicant held on 22.05.1996 at 150 General Hospital, Rajouri assessed his disability @ 30% for 2 years and considered as aggravated by military service due to physical stress and strain of service. The applicant was granted service pension from the date of discharge from service for life. Claim of applicant for the grant of disability pension was rejected by the respondents vide letter dated 07.02.1997 being constitutional in nature and not related to service. His application for grant of disability pension was also rejected vide letter dated 14.03.1997. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

4. Learned counsel for the applicant pleaded that at the time of enrolment, he was found mentally and physically fit for service in the army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. He submitted that RMB opined disability as aggravated by military service but Advisor at PCDA (P), Allahabad rejected the claim considering as constitutional in nature and not related to service. He further submitted that claim for the grant of disability pension was wrongly rejected by

the respondents. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof and its rounding off to 50%. He also relied upon the judgment of the Hon'ble Apex Court in the case of ***Sukhvinder Singh vs Union of India & Ors***, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that he is entitled to grant of disability pension and its rounding off.

5. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 30% for two years, but he submitted that Advisor at PCDA (P), Allahabad while rejecting the claim of the applicant has viewed that disability was found as constitutional in nature and not connected with military service, therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected.

6. We have heard learned counsel for the parties and perused the record.

7. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words :

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory

for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

9. After considering all issues we have noted that disability was considered as aggravated by military service by the RMB but Advisor at PCDA (P), Allahabad has considered it as constitutional in nature and no reason for denying Attributability has been given. We find that when the applicant joined the Army, he was medically examined and found to be in Shape-I and the aforesaid disability was contracted after about 15 years of service which resulted in the downgrading of his medical category. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of entering in service, it will be presumed that deterioration of his health has taken place due to service and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court in the case of ***Dharamvir Singh*** (Supra). Therefore, we consider the disease of the applicant as aggravated by military service. We also converge to the view that, in view of law laid down by Hon'ble The Apex Court in the case of ***Veer Pal Singh***, in the interest of justice, the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

10. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

11. In view of the above the Original Application deserves to be allowed.

12. Accordingly, O.A. is **allowed**. The impugned orders passed by the respondents rejecting the claim for the grant of disability pension are set aside. The respondents are directed to grant disability pension to the applicant @ 30% for two years, which shall stand rounded off to 50% for two years from the date of discharge. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

13. No order as to cost.

14. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 19 July, 2021

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